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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ESTHER RONDAN,
12 Plaintiff,
13 v.
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15 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
16 Defendant.
17

Case No. EDCV 17-1454 JC

MEMORANDUM OPINION

18 **I. SUMMARY**

19 On July 21, 2017, plaintiff Esther Rondan filed a Complaint seeking review
20 of the Commissioner of Social Security's denial of plaintiff's applications for
21 benefits. The parties have consented to proceed before the undersigned United
22 States Magistrate Judge.

23 This matter is before the Court on the parties' cross motions for summary
24 judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion")
25 (collectively "Motions"). The Court has taken the Motions under submission
26 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; July 25, 2017, Case
27 Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge
3 (“ALJ”) are supported by substantial evidence and are free from material error.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 On April 1, 2013, plaintiff filed applications for Supplemental Security
7 Income and Disability Insurance Benefits alleging disability beginning on June 28,
8 2011, due to schizophrenia, bipolar disorder, diabetes, anxiety, and depression.
9 (Administrative Record (“AR”) 33, 198, 201, 225). The ALJ examined the
10 medical record and heard testimony from plaintiff (who was represented by
11 counsel) and a vocational expert on December 3, 2015. (AR 51-72).

12 On February 26, 2016, the ALJ determined that plaintiff was not disabled
13 through the date of the decision. (AR 33-46). Specifically, the ALJ found:
14 (1) plaintiff suffered from the following severe impairments: schizophrenia,
15 bipolar disorder, diabetes mellitus, anxiety, depression, and history of arthroscopic
16 knee surgery (AR 35); (2) plaintiff’s impairments, considered individually or in
17 combination, did not meet or medically equal a listed impairment (AR 36);
18 (3) plaintiff retained the residual functional capacity to perform a range of medium
19 work (20 C.F.R. §§ 404.1567(c), 416.967(c)) with additional limitations¹ (AR 37);
20 (4) plaintiff could not perform any past relevant work (AR 44); (5) there are jobs
21 that exist in significant numbers in the national economy that plaintiff could
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23 ¹The ALJ determined that plaintiff could (i) lift and/or carry 50 pounds occasionally and
24 25 pounds frequently; (ii) stand and/or walk for six hours out of an eight-hour workday with
25 regular breaks; (iii) sit for six hours out of an eight-hour workday with regular breaks; (iv) not
26 climb ladders, ropes, or scaffolds; (v) occasionally use moving, hazardous machinery;
27 (vi) occasionally have exposure to unprotected heights; (vii) perform unskilled work at all
28 reasoning levels appropriate for unskilled work; (viii) have only occasional and superficial
interaction with the public; (ix) occasionally have interaction with coworkers; and (x) not
perform customer service related decisions because plaintiff would work better with things,
rather than people. (AR 37).

1 perform (AR 45-46); and (6) plaintiff's statements regarding the intensity,
2 persistence, and limiting effects of subjective symptoms were less than fully
3 credible (AR 38).

4 On May 22, 2017, the Appeals Council denied plaintiff's application for
5 review. (AR 1).

6 **III. APPLICABLE LEGAL STANDARDS**

7 **A. Administrative Evaluation of Disability Claims**

8 To qualify for disability benefits, a claimant must show that she is unable
9 "to engage in any substantial gainful activity by reason of any medically
10 determinable physical or mental impairment which can be expected to result in
11 death or which has lasted or can be expected to last for a continuous period of not
12 less than 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
13 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). To be
14 considered disabled, a claimant must have an impairment of such severity that she
15 is incapable of performing work the claimant previously performed ("past relevant
16 work") as well as any other "work which exists in the national economy." Tackett
17 v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)).

18 To assess whether a claimant is disabled, an ALJ is required to use the five-
19 step sequential evaluation process set forth in Social Security regulations. See
20 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
21 Cir. 2006) (citations omitted) (describing five-step sequential evaluation process)
22 (citing 20 C.F.R. §§ 404.1520, 416.920). The claimant has the burden of proof at
23 steps one through four – *i.e.*, determination of whether the claimant was engaging
24 in substantial gainful activity (step 1), has a sufficiently severe impairment (step
25 2), has an impairment or combination of impairments that meets or equals a listing
26 in 20 C.F.R. Part 404, Subpart P, Appendix 1 (step 3), and retains the residual
27 functional capacity to perform past relevant work (step 4). Burch v. Barnhart, 400
28 F.3d 676, 679 (9th Cir. 2005) (citation omitted). The Commissioner has the

1 burden of proof at step five – *i.e.*, establishing that the claimant could perform
2 other work in the national economy. Id.

3 **B. Federal Court Review of Social Security Disability Decisions**

4 A federal court may set aside a denial of benefits only when the
5 Commissioner’s “final decision” was “based on legal error or not supported by
6 substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871
7 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The
8 standard of review in disability cases is “highly deferential.” Rounds v.
9 Commissioner of Social Security Administration, 807 F.3d 996, 1002 (9th Cir.
10 2015) (citation and quotation marks omitted). Thus, an ALJ’s decision must be
11 upheld if the evidence could reasonably support either affirming or reversing the
12 decision. Trevizo, 871 F.3d at 674-75 (citations omitted). Even when an ALJ’s
13 decision contains error, it must be affirmed if the error was harmless. Treichler v.
14 Commissioner of Social Security Administration, 775 F.3d 1090, 1099 (9th Cir.
15 2014) (ALJ error harmless if (1) inconsequential to the ultimate nondisability
16 determination; or (2) ALJ’s path may reasonably be discerned despite the error)
17 (citation and quotation marks omitted).

18 Substantial evidence is “such relevant evidence as a reasonable mind might
19 accept as adequate to support a conclusion.” Trevizo, 871 F.3d at 674 (citation
20 and quotation marks omitted). It is “more than a mere scintilla, but less than a
21 preponderance.” Id. When determining whether substantial evidence supports an
22 ALJ’s finding, a court “must consider the entire record as a whole, weighing both
23 the evidence that supports and the evidence that detracts from the Commissioner’s
24 conclusion[.]” Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation
25 and quotation marks omitted).

26 Federal courts review only the reasoning the ALJ provided, and may not
27 affirm the ALJ’s decision “on a ground upon which [the ALJ] did not rely.”
28 Trevizo, 871 F.3d at 675 (citations omitted). Hence, while an ALJ’s decision need

not be drafted with “ideal clarity,” it must, at a minimum, set forth the ALJ’s reasoning “in a way that allows for meaningful review.” Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (citing Treichler, 775 F.3d at 1099).

IV. DISCUSSION

Plaintiff contends that a remand or reversal is warranted because the ALJ failed to articulate legally sufficient reasons for rejecting plaintiff’s subjective complaints. (Plaintiff’s Motion at 4-13). The Court disagrees.

A. Pertinent Law

When determining disability, an ALJ is required to consider a claimant’s impairment-related pain and other subjective symptoms at each step of the sequential evaluation process. 20 C.F.R. §§ 404.1529(a) & (d), 416.929(a) & (d). Accordingly, when a claimant presents “objective medical evidence of an underlying impairment which might reasonably produce the pain or other symptoms [the claimant] alleged,” the ALJ is required to determine the extent to which the claimant’s statements regarding the intensity, persistence, and limiting effects of his or her symptoms (“subjective statements” or “subjective complaints”) are consistent with the record evidence as a whole and, consequently, whether any of the individual’s symptom-related functional limitations and restrictions are likely to reduce the claimant’s capacity to perform work-related activities. 20 C.F.R. §§ 404.1529(a), (c)(4), 416.929(a), (c)(4); Social Security Ruling (“SSR”) 16-3p, 2017 WL 5180304, at *4-*10; SSR 96-7p, 1996 WL 374186, at *1-*5.² When an individual’s subjective statements are inconsistent

²Social Security Rulings reflect the Social Security Administration’s (“SSA”) official interpretation of pertinent statutes, regulations, and policies. 20 C.F.R. § 402.35(b)(1). Although they “do not carry the ‘force of law,’” Social Security Rulings “are binding on all components of the . . . Administration[,]” and are entitled to deference if they are “consistent with the Social Security Act and regulations.” 20 C.F.R. § 402.35(b)(1); Bray v. Commissioner of Social Security Administration, 554 F.3d 1219, 1224 (9th Cir. 2009) (citations and quotation marks

(continued...)

1 with other evidence in the record, an ALJ may give less weight to such statements
2 and, in turn, find that the individual's symptoms are less likely to reduce the
3 claimant's capacity to perform work-related activities. See SSR 16-3p, 2017 WL
4 5180304, at *8; SSR 96-7p, 1996 WL 374186, at *1-*3. In such cases, when there
5 is no affirmative finding of malingering, an ALJ may "reject" or give less weight
6 to the individual's subjective statements "only by providing specific, clear, and
7 convincing reasons for doing so." Brown-Hunter, 806 F.3d at 488-89.³ This
8 requirement is very difficult to satisfy. See Trevizo, 871 F.3d at 678 ("The clear
9 and convincing standard is the most demanding required in Social Security
10 cases.") (citation and quotation marks omitted).

11 An ALJ's decision "must contain specific reasons" supported by substantial
12 evidence in the record for giving less weight to a claimant's statements. SSR 16-

14 ²(...continued)
15 omitted); see also Heckler v. Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing weight and
16 function of Social Security rulings). Social Security Ruling 16-3p superseded SSR 96-7p and, in
17 part, eliminated use of the term "credibility" from SSA "sub-regulatory policy[]" in order to
18 "clarify that subjective symptom evaluation is not an examination of an individual's [overall
19 character or truthfulness] . . . [and] more closely follow [SSA] regulatory language regarding
20 symptom evaluation." See SSR 16-3p, 2017 WL 5180304, at *1-*2, *10-*11. The SSA recently
21 republished SSR 16-3p making no change to the substantive policy interpretation regarding
22 evaluation of a claimant's subjective complaints, but clarifying that the SSA would apply SSR
23 16-3p only "[when making] determinations and decisions on or after March 28, 2016[.]" and that
24 federal courts should apply "the rules [regarding subjective symptom evaluation] that were in
25 effect at the time" an ALJ's decision being reviewed became final. SSR 16-3p, 2017 WL
5180304, at *1, *13 n.27. It is unclear from such language whether SSR 16-3p is retroactive
where, like here, the ALJ issued the decision under review *before* SSR 16-3p became
"applicable" on March 28, 2016, but the Appeals Council denied review (and thus the
Commissioner's decision became "final") *after*. The issue of retroactivity, however, need not be
resolved here since the ALJ's evaluation of plaintiff's subjective complaints passes muster
whether SSR 16-3p or its predecessor, SSR 96-7p, governs.

26 ³It appears to the Court, based upon its research of the origins of the requirement that
27 there be "specific, clear and convincing" reasons to reject or give less weight to an individual's
28 subjective statements absent an affirmative finding of malingering, that such standard of proof
remains applicable irrespective of whether SSR 96-7p or SSR 16-3p governs. See Trevizo, 871
F.3d at 678-79 & n.5 (citations omitted).

3p, 2017 WL 5180304, at *10; SSR 96-7p, 1996 WL 374186, at *2, *4. An ALJ must clearly identify each statement being rejected and the particular evidence in the record which purportedly undermines the statement. Treichler, 775 F.3d at 1103 (citation omitted).

If an ALJ's evaluation of a claimant's statements is reasonable and is supported by substantial evidence, it is not the court's role to second-guess it. See Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (citation omitted).

B. Analysis

Here, plaintiff argues that the ALJ provided "woefully insufficient reasons" for rejecting plaintiff's subjective statements. (Plaintiff's Motion at 5) (citing AR 38-39). Curiously, in plaintiff's own briefing plaintiff does not identify any specific subjective complaint plaintiff believes the ALJ improperly rejected. (Plaintiff's Motion at 4-12). Plaintiff does assert that she testified "[a]t the hearing . . . about the nature and extent of her condition[,] " but provides citations for the transcript of all witness testimony from the administrative hearing in plaintiff's case, plaintiff's entire function report, and a third-party function report (which, by definition, contains no direct statements from plaintiff at all). (Plaintiff's Motion at 5) (citing AR 51-72, 244-252, 253-261). Plaintiff also says "[t]he ALJ summarized that testimony in the decision," but simply cites a portion of the ALJ's credibility analysis from the decision and again does not specify any individual subjective complaint which the ALJ is alleged to have erroneously rejected. (Plaintiff's Motion at 5) (citing AR 38-39). Such sweeping and conclusory arguments are insufficient to justify a remand here. See Carmickle v. Commissioner of Social Security Administration, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address challenge to ALJ's finding where claimant "failed to argue th[e] issue with any specificity in [] briefing") (citation omitted); Independent Towers of Washington v. Washington, 350 F.3d 925, 929 (9th Cir. 2003) (appellate courts "review only issues which are argued specifically and

1 distinctly in a party’s opening brief.”) (citations omitted); Carmen v. San
2 Francisco Unified School District, 237 F.3d 1026, 1030-31 (9th Cir. 2001) (on
3 summary judgment parties must provide citations to location in record where
4 specific facts may “conveniently be found” and court may limit its review to those
5 parts of the record the parties have “specifically referenced”); Keenan v. Allan, 91
6 F.3d 1275, 1279 (9th Cir. 1996) (district court not required to “scour the record”
7 on summary judgment where party has failed to identify specific record evidence
8 with reasonable particularity) (citations omitted).

9 Similarly, plaintiff also asserts that the ALJ “did not consider [plaintiff’s]
10 credible testimony” and “did not identify clear and convincing reasons supporting
11 her disbelief[,]” but instead simply “articulated generalities.” (Plaintiff’s Motion
12 at 11). Again, such conclusory argument, without more, fails to persuade the
13 Court that a remand is warranted here. See Independent Towers of Washington,
14 350 F.3d at 929 (party’s “bare assertion of an issue” in briefing “does not preserve
15 a claim” on appeal) (citations omitted); Moody v. Berryhill, 245 F. Supp. 3d 1028,
16 1032-33 (C.D. Ill. 2017) (“The Court ‘cannot fill the void [in a claimant’s
17 analysis] by crafting arguments and performing the necessary legal research.’”)
18 (citing Anderson v. Hardman, 241 F.3d 544, 545 (7th Cir. 2001)); Rogal v. Astrue,
19 2012 WL 7141260, *3 (W.D. Wash. Dec. 7, 2012) (“It is not enough merely to
20 present an argument in the skimpiest way, and leave the Court to do counsel’s
21 work—framing the argument and putting flesh on its bones through a discussion of
22 the applicable law and facts.”) (citations omitted), report and recommendation
23 adopted, 2013 WL 557172 (W.D. Wash. Feb. 12, 2013), aff’d, 590 Fed. Appx. 667
24 (9th Cir. 2014); see, e.g., DeBerry v. Commissioner of Social Security
25 Administration, 352 Fed. Appx. 173, 176 (9th Cir. 2009) (declining to consider
26 claim of ALJ error where claimant failed to address issue “with any specificity” in
27 opening brief) (citing Carmickle, 533 F.3d at 1161 n.2).

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Moreover, plaintiff's conclusory assertions mischaracterize the ALJ's evaluation of plaintiff's symptoms. First, the ALJ properly gave less weight to plaintiff's subjective complaints to the extent plaintiff engaged in daily activities which require a greater level of functioning than plaintiff alleges she can actually do. See Burrell v. Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014) (inconsistencies between claimant's testimony and claimant's reported activities valid reason for giving less weight to claimant's subjective complaints) (citation omitted); SSR 16-3p, 2016 WL 1119029, at *7 (ALJ may determine that claimant's symptoms "are less likely to reduce his or her capacities to perform work-related activities" where claimant's subjective complaints are inconsistent with evidence of claimant's daily activities) (citing 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3)). For example, as the ALJ noted (AR 38), contrary to plaintiff's allegations of disabling symptoms, plaintiff testified at the hearing that she was "able to do [her] daily chores" (with help from her son) except for about two days out of the month when plaintiff was unable to get out of bed due to her depression (AR 59, 61), takes care of her mother for about 20 hours a month (*i.e.*, administers medication, feeds, and bathes her mother) (AR 57, 59-60), cooks and does other "daily functions around the house" (*i.e.*, vacuuming, sweeping, dishes) (AR 61), works on her computer two times a week (AR 62), takes her mother to Bingo once a week on Thursday and attends a Bible Study group on Wednesdays and church on Sundays (AR 63), does "scrapbooking" with friends "at nighttime after all the kids are asleep . . . for about an hour or two" (AR 62, 64), has coffee with friends (AR 62), goes to the supermarket (AR 63), and reads books (AR 63-64). Consistently, in her function report, plaintiff stated that she could prepare meals for herself, her husband, and her children (although now she could do so "less than daily" and her husband would help out "more often"), she could do "cooking, cleaning, laundry, [and] ironing . . . [for a] few hours on a daily basis" (also with help from her husband), plays Bingo once a week on Thursdays, would go to church weekly and go

1 grocery shopping three times a week for about one half hour each time, could
2 handle her own finances, and engaged in “daily” hobbies include “reading[,]
3 scrapbooking, and watching TV.” (AR 38-39, 245-48).

4 As plaintiff appears to suggest (Plaintiff’s Motion at 9-11), a claimant “does
5 not need to be ‘utterly incapacitated’ in order to be disabled.” Vertigan v. Halter,
6 260 F.3d 1044, 1050 (9th Cir. 2001) (citation omitted). Nonetheless, this does not
7 mean that an ALJ must find that a claimant’s daily activities demonstrate an ability
8 to engage in full-time work (*i.e.*, eight hours a day, five days a week) in order to
9 discount conflicting subjective symptom testimony. To the contrary, even where a
10 claimant’s activities suggest some difficulty in functioning, an ALJ may give less
11 weight to subjective complaints to the extent a claimant’s apparent actual level of
12 activity is inconsistent with the extent of functional limitation the claimant has
13 alleged. See Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998) (ALJ may
14 consider daily activities to extent plaintiff’s “level of activity [is] inconsistent with
15 [the] . . . claimed limitations”); cf. Molina, 674 F.3d at 1113 (“Even where
16 [claimant’s] activities suggest some difficulty functioning, they may be grounds
17 for [giving less weight to] the claimant’s testimony to the extent that they
18 contradict claims of a totally debilitating impairment.”) (citations omitted). Here,
19 even though plaintiff stated that she had some difficulty functioning, substantial
20 evidence supports the ALJ’s conclusion that plaintiff’s subjective complaints were
21 “less than fully credible” because plaintiff had “engaged in a somewhat normal
22 level of daily activity and interaction.” (AR 38-39); cf., e.g., Curry v. Sullivan,
23 925 F.2d 1127, 1130 (9th Cir. 1990) (claimant’s ability to “take care of her
24 personal needs, prepare easy meals, do light housework and shop for some
25 groceries . . . may be seen as inconsistent with the presence of a condition which
26 would preclude all work activity”) (citing Fair v. Bowen, 885 F.2d 597, 604 (9th
27 Cir. 1989)). While plaintiff suggests that the level of her daily activities was not
28 inconsistent with her subjective complaints (Plaintiff’s Motion at 9-10), this Court

1 will not second guess the ALJ’s reasonable determination to the contrary, even if
2 the evidence could give rise to inferences more favorable to plaintiff. Trevizo,
3 871 F.3d at 674-75 (citations omitted).

4 Second, the ALJ properly gave less weight to plaintiff’s subjective
5 complaints to the extent effective medical treatment alleviated plaintiff’s
6 symptoms. See Warre v. Commissioner of Social Security Administration, 439
7 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled effectively
8 with medication are not disabling. . . .”) (citations omitted); see, e.g., Bailey v.
9 Colvin, 659 Fed. Appx. 413, 415 (9th Cir. 2016) (evidence that “impairments had
10 been alleviated by effective medical treatment,” to the extent inconsistent with
11 “alleged total disability[,]” specific, clear, and convincing reason for discounting
12 subjective complaints) (citing id.). As the ALJ noted, there is evidence in the
13 record that plaintiff’s “treatment has been generally successful in controlling
14 [plaintiff’s] symptoms.” (AR 39, 43) (citing, in part, Exhibit 8F at 1 [AR 487 - to
15 December 4, 2014 Adult Psychiatric Assessment noting plaintiff “reports good
16 response to current medications,” plaintiff’s “delusions [and] hallucinations” had
17 been “resolved with medications,” and plaintiff’s anxiety, mania, trembling, and
18 shaking “improved with medications”]; Exhibit 2F at 5 [AR 351 - noting plaintiff
19 reported feeling “stable on current dose [of medication]” and medication was
20 simply refilled]; Exhibit 4F at 12 [AR 448 - December 7, 2012 Medication
21 Progress Note documenting “Medication Efficacy” as “Stable”]; Exhibit 6F at [AR
22 479 - July 18, 2013, Medication Progress Note that plaintiff “reports good
23 response to medication”]).

24 Finally, the ALJ properly gave less weight to plaintiff’s subjective
25 complaints due, in part, to the absence of supporting objective medical evidence.
26 (See AR 39-43 [thorough discussion of record medical evidence which reflects
27 unremarkable findings overall on objective medical testing and gradual
28 improvement in plaintiff’s condition with medication compliance]); see Burch,

1 400 F.3d at 681 (“Although lack of medical evidence cannot form the sole basis
2 for discounting pain testimony, it is a factor that the ALJ can consider. . . .”); SSR
3 16-3p, 2016 WL 1119029, at *5 (“[ALJ may] not disregard an individual’s
4 statements about the intensity, persistence, and limiting effects of symptoms solely
5 because the objective medical evidence does not substantiate the degree of
6 impairment-related symptoms alleged by the individual.”); SSR 96-7p, 1996 WL
7 374186, at *6 (same).

8 Accordingly, a reversal or remand is not warranted on the asserted basis.

9 **V. CONCLUSION**

10 For the foregoing reasons, the decision of the Commissioner of Social
11 Security is affirmed.

12 LET JUDGMENT BE ENTERED ACCORDINGLY.

13 DATED: March 29, 2018

14 /s/

15 Honorable Jacqueline Chooljian
16 UNITED STATES MAGISTRATE JUDGE
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